

**The Oregon Administrative Rules contain OARs filed through November
15, 2005**

DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH

DIVISION 545

**PURPOSE, APPLICABILITY AND DEFINITIONS FOR CERTIFICATE OF
NEED**

333-545-0000

Purpose of Certificate of Need

(1) ORS Chapter 442 establishes state planning for health services and facilities in light of the following findings and in furtherance of health planning policies of the state as established through legislative and executive agency action. The certificate of need program of the Health Division has as its purpose the achievement of reasonable access to quality health care, at a reasonable cost. Therefore, decisions regarding proposed new health services and facilities shall be made for reasons having to do with the most urgent community health needs in the various parts of the state. The burden of proof for need and viability shall be on the applicant, taking these legislative findings into account:

(a) Many citizens are unable to pay for necessary health care, being covered neither by private insurance nor by publicly funded programs such as Medicare and Medicaid;

(b) Health care costs are rising at rates which exceed substantially the general rate of inflation;

(c) There is insufficient price competition in the delivery of health care services and therefore insufficient cost consciousness among providers, payors and consumers;

(d) There are inadequate incentives for the use of less costly and more appropriate alternative levels of health care;

(e) There is insufficient or inappropriate use of existing capacity; there are duplicated services; and there is failure to use less costly alternatives in meeting significant health needs; and

(f) There are insufficient primary and emergency medical care services in medically underserved areas of the state.

(2) In responding to the legislative findings listed in section (1) of this rule and to health planning policies of the state, the certificate of need program shall be administered with the goal of containing capital investment and the objectives of:

(a) Promoting development of more effective methods of delivering health care;

(b) Improving distribution of health care facilities and services;

(c) Controlling increase of health care costs, including the promotion of improved competition between providers;

(d) Promoting planning for health care services at the facility, regional and state levels;

(e) Maximizing the use of existing health care facilities and services which represent the least costly and most appropriate levels of care; and

(f) Minimizing the unnecessary duplication of health care facilities and services.

(3) The division recognizes that:

(a) The objective of reasonable access must be tempered by acknowledgment that decentralized services may not be safe, effective, or economical if utilization is below identified standards;

(b) The objective of reasonable cost in any part of the state requires consideration of the actual and potential capacity of all facilities and services available or feasible to serve persons resident in that part of the state, so as to maximize the use of existing capacity, minimize unnecessary duplication, and give priority to the least costly alternatives feasible to meet significant health needs;

(c) Realistically, price competition among providers of any given type of institutionally-based care is limited and may jeopardize quality, so that regulation of market entry through certificate of need, and maintenance of quality through strict licensure standards, is necessary;

(d) Market competition between providers of institutional and alternative care contributes to the objective of reasonable access to quality health care at reasonable cost by reducing the likelihood of utilization of higher cost care when lower cost care would meet health needs, and should, therefore, be encouraged;

(e) Public and private funds available for health care and related social services are limited by available revenues and by demand for other expenditures. Therefore, institutionally-based health care capacity should be regulated so that the proportions of

available funds, whether publicly or privately paid, committed to less or more intensive service levels are determined by the balance of needs among the population to be served, rather than by pressure to fully utilize excess institutional capacity;

(f) Health care regulatory, planning, and public and private reimbursement mechanisms should be coordinated so as to give incentives to providers to select the least costly treatment consistent with acceptable risk, and to give necessary care in the least costly setting;

(g) Specific projects to modernize facilities at a particular facility do not necessarily contribute to the statewide objective of reasonable access to quality health care at a reasonable cost, and must be carefully reviewed against that standard.

Stat. Auth.: [ORS 431.120\(6\)](#), [ORS 442.025](#) & [ORS 442.315](#)

Stats. Implemented: [ORS 431.120\(6\)](#), [ORS 442.025](#) & [ORS 442.315](#)

Hist.: HD 13-1994, f. & cert. ef. 4-22-94; OHD 11-1998, f. & cert. ef. 10-22-98

333-545-0010

Purpose and Applicability of Rules

(1) Divisions 545 through 670 of OAR Chapter 333 establish procedures for the certificate of need program.

(2) Divisions 545 through 670 of OAR Chapter 333 apply to the division and persons subject to provisions of the certificate of need law.

(3) The authority for Divisions 545 through 670 of OAR Chapter 333 is [ORS 431.120\(6\)](#) and 442.315.

Stat. Auth.: [ORS 431.120\(6\)](#) & [ORS 442.315](#)

Stats. Implemented: [ORS 431.120\(6\)](#) & [ORS 442.315](#)

Hist.: HD 13-1994, f. & cert. ef. 4-22-94; OHD 11-1998, f. & cert. ef. 10-22-98

333-545-0020

Definitions

As used in Divisions 545 through 670 of OAR Chapter 333 unless the context requires otherwise:

(1) "Adjusted Admission" means the sum of all inpatient admissions divided by the ratio of inpatient revenues to total patient revenues.

(2) "Administrator" means the administrator of the Health Division.

(3) "Amendment to an Application" means any substantial change in the data on which the application is based; a substantial change in either the proposed services, equipment, construction, price, project schedule, financing of the project, budget of the project, or financial position of the applicant; or other changes which the division determines to constitute an amendment which may directly affect the division's decision or which substantially change the proposal.

(4) "Affected Person" means a person who, as determined by the division, either has an interest in the outcome of the division's proceeding or represents a public interest.

"Affected person" has the same meaning as given to "party" under [ORS 183.310\(6\)](#) and includes:

(a) Each person or agency entitled as of right to a hearing before the division;

(b) Each person or agency named by the division to be a party; and

(c) Any person requesting to participate before the division as a party or in a limited party status which the division determines either has an interest in the outcome of the division's proceeding or represents a public interest in such result. The division's determination is subject to judicial review in the manner provided by [ORS 183.482](#) after the division has issued its final order in the proceedings.

(5) "Applicant" means a person intending, or who is required, to apply for a certificate of need. The applicant must be the person making or obligating the expenditure or the person who holds the facility license.

(6) "Bed Capacity" means the maximum number of inpatient care bed spaces in a facility which can be made readily available for inpatient use in accord with Health Division rules governing acute inpatient care and Senior and Disabled Services Division rules governing long-term care facilities:

(a) Inpatient beds permanently removed from service to allow conversion of rooms for other than direct inpatient nursing care will not be considered part of "bed capacity", if the space for these beds is no longer readily available for inpatient use. Temporary removal of beds from patient rooms for purposes of cleaning, maintenance, renovation, or nonuse is allowable without a change in "bed capacity";

(b) In the case of licensed special inpatient care facilities, "bed capacity" refers to the number of patient care stations;

(c) In determining the number of approvable beds in a hospital remodel project, "bed capacity", as defined in this section, may be adjusted on the basis of an evaluation of the proportion of private rooms. The number of bed spaces set up as private, single patient rooms in each general medical, surgical and obstetrical unit at the time the application is

submitted, shall be compared to the total bed capacity of each unit at that time. For each unit in which the ratio of private bed spaces to total bed spaces does not equal or exceed 20 percent, to the nearest whole number of bed spaces, the number of private bed spaces necessary to cause each unit to reach that ratio shall be calculated. In review of the project, if the applicant so desires, a compensating number of semi-private rooms will be considered as having capacity for only one bed space. This adjustment will facilitate remodeling of general units to include 20 percent private rooms, when desired, without ultimately increasing total licensed bed capacity at the facility;

(d) A patient room shall be considered as being readily available for use at its maximum potential bed capacity in accord with per bedroom space requirements of the Health Division or Senior and Disabled Services Division when the placement of such beds requires no or only minor alterations to conform to Health Division or Senior and Disabled Services Division rules. Minor alterations include installation of such items as additional electrical outlets, over bed lights, oxygen and vacuum outlets, and cubicle curtains, but do not include the moving of walls or the addition of required plumbing fixtures except when rough plumbing has previously been done.

(7) "Complete Application (Application)" means an application substantially as described in Division 580 of this chapter, which contains all the information specified in the application form and instructions necessary to enable a proper review and decision.

(8) "Days" unless otherwise specified, mean calendar days. In determining elapsed time for notices, etc., the first day is not counted. In this context, "first day" is the date of mailing of the notice. If the last counted day falls on a weekend or holiday, the last day is the next business day.

(9) "Develop" has the meaning given the term "develop" in ORS 442.015(9) and includes arrangements or commitments for financing, which, under applicable state law, are binding upon a health care facility.

(10) "Director" means the director of the Department of Human Resources.

(11) "Division" means the Health Division.

(12) "Expenditure" or "Capital Expenditure" means an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and includes leases or comparable arrangements, or donations which would have been a capital expenditure if the lease, comparable arrangement, or donation had been a purchase. Interest charges are not included in determining the amount of capital expenditures.

(13) "Gross Revenue" means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges, and other operating revenue. "Gross revenue" does not include contributions, donations, legacies, or bequests made to a hospital without restriction by the donors.

(14) "Health Maintenance Organization (HMO)" has the meaning given the term in [ORS 442.015](#)(15).

(15) "Health Service Area" refers to one of three areas into which the State of Oregon has been divided for health planning purposes. These areas are defined as follows:

(a) Health service area I includes Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington Counties;

(b) Health service area II includes Benton, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Polk, and Yamhill Counties;

(c) Health service area III includes Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties.

(16) "Inpatient" means a person who has been admitted to a health care facility and who remains for at least one overnight stay. Inpatients, discharged from a health care facility for purposes of utilizing non-hospital owned or operated diagnostic or treatment equipment, and who are then returned as an inpatient of the same health care facility within a 24-hour period, are considered "inpatients", despite their temporary absence from such facility.

(17) "Licensed Health Care Facility" refers to the license to offer specified health services, issued to a hospital by the state Health Division or to a nursing home by the Senior and Disabled Services Division. The license is not necessarily issued to the owner of the property, but to the provider. Any change in provider requires a new license. A certificate of need is required when a change of provider results in a new hospital or long-term care facility or service, as defined in OAR 333-550-0010(2) and (3)(a).

(18) "Net Revenue" means gross revenue minus deductions from revenue.

(19) "Operating Expenses" means the sum of daily hospital service expenses, ambulatory service expenses, ancillary expenses, and other operating expense, excluding income taxes.

(20) "Project Cost" as used in the fee schedule, OAR 333-565-0000(4), means the greater of:

(a) "As built project cost", in accord with Capital Expenditure Estimate Form CN-3, line (i), of the application;

(b) Projected annual operating expense for the first full year of operation of a service.

(21) "Proposal" or "Project" means an expenditure for one or more new health services for which the applicant intends to apply under a single certificate of need application as required by ORS 442.315.

(22) "Public Hearing" or "Reconsideration Hearing" means a contested case hearing held pursuant to ORS Chapter 183.

(23) "Service" or receipt of any notice, order, or document shall be accomplished by the division when the document is mailed, and by any other party when the document is received by the division.

(24) "Service Area" means a group or area from which the applicant expects to draw a substantial portion of patients. Such area must be identified in the application, and its use must be substantiated. Service areas of other applicants and health care facilities may overlap. Not all patients in the applicant's service area need to be expected to receive their health services from the applicant.

(25) "State Agency" means the Office of the Director of the Department of Human Resources of the State of Oregon.

(26) "Total Deductions from Gross Revenue" or "Deductions from Revenue" means reductions from gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts; contractual adjustments; uncompensated care; administrative, courtesy and policy discounts and adjustments, and other such revenue deductions. The deduction shall be net of the offset of restricted donations and grants for indigent care.

(27) "Type A Rural Hospital" refers to a hospital which is small and remote, has 50 or fewer beds and is greater than 30 miles from another acute inpatient care facility, and which has been designated a Type A rural hospital by the Office of Rural Health.

(28) "Type B Rural Hospital" refers to a hospital which is small and rural and has 50 or fewer beds, and is 30 miles or less from another acute inpatient care facility, and which has been designated a Type B rural hospital by the Office of Rural Health.

[ED. NOTE: The Form(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: [ORS 431.120\(6\)](#), [ORS 442.015](#), [ORS 442.315](#) & ORS 442.470

Stats. Implemented: [ORS 431.120\(6\)](#) & [ORS 442.315](#)

Hist.: HD 13-1994, f. & cert. ef. 4-22-94; OHD 11-1998, f. & cert. ef. 10-22-98